

State of Wyoming



Department of Health

Chapters 1 through 6 Rules and Regulations for the Wyoming End Stage Renal Disease Program

**Brent D. Sherard, M.D., M.P.H., F.A.C.P.
Director and State Health Officer**

April 2010

**State of Wyoming
Department of Health**

**Chapters 1 through 6
Rules and Regulations for the
Wyoming End Stage Renal Disease Program**

Rules and Regulations for the
Wyoming End Stage Renal Disease Program
Wyoming Department of Health
Rural and Frontier Health Division
Community Services Programs

Additional information and copies may be obtained from:
Rural and Frontier Health Division
Jim Rolf, Manager, Community Services Programs
6101 Yellowstone Rd., Ste. 510
Cheyenne, Wyoming 82002
Telephone: (307) 777-8652
Facsimile: (307) 777-8545
E-Mail Address: jim.rolf@health.wyo.gov

This document is available in alternative format upon request.

CHAPTERS 1 THROUGH 6

Rules and Regulations for the Wyoming End Stage Renal Disease Program Intent to Adopt Amended Rules

Statement of Reasons

The Wyoming Department of Health proposes the following Amended Rules to comply with the provisions of the Medical Assistance and Services Act at W.S. 42-4-101, *et seq.*, and more specifically the Wyoming End Stage Renal Disease Program. This Program was expanded in the 2001 Legislative General Session at House Enrolled Act (HEA) 88, which was codified at W.S. 42-4-117. The Act, W.S. 42-4-117, and the Wyoming Administrative Procedures Act at W.S. 16-3-101, *et seq.*, authorize the Department of Health to promulgate these rules amending the requirements of the Wyoming End Stage Renal Disease Program.

The Proposed Amended Rules amend the existing Rules by updating the eligibility and application process (see Chapter 2, Sections 3 through 7); removing the requirement that End Stage Renal Disease dialysis facilities contract with the Wyoming Department of Health (see Chapter 3, Sections 2 and 3, and Chapter 5, Section 2); and updating the language throughout to reflect these changes, to eliminate gender bias and to do general updating to reflect current practices. The name of the implementing agency has been amended to reflect this name change within the Wyoming Department of Health, and federal agency names and documents have been updated.

As required by W.S. 16-3-103(a)(i)(G), the amendments to the Rules implementing the Wyoming End Stage Renal Disease Program meet minimum substantive state statutory requirements.

CHAPTER 1
Rules for General Provisions

Section 1.	Authority	1-1
Section 2.	Statement of Purpose	1-1
Section 3.	Changes or Restrictions in Service Category Reimbursement	1-2
Section 4.	Definitions.....	1-2
Section 5.	Payment of Program Benefits	1-5

CHAPTER 2
Rules for Eligibility Requirements

Section 1.	Authority	2-1
Section 2.	Statement of Purpose	2-1
Section 3.	Eligibility	2-1
Section 4.	Application Process	2-2
Section 5.	Co-payment Liability	2-3
Section 6.	Incomplete Applications	2-3
Section 7.	Eligibility Date.....	2-4

CHAPTER 3
Rules for Conditions of Participation for Facilities

Section 1.	Authority	3-1
Section 2.	Statement of Purpose	3-1
Section 3.	Conditions and/or Approval Requirements	3-1

CHAPTER 4
Rules for Denial of Application; Modification,
Suspension, or Termination of Patient Benefits

Section 1.	Authority	4-1
Section 2.	Statement of Purpose	4-1
Section 3.	Procedures for the Denial of Benefits or the Modification, Suspension, or Termination of Benefits.....	4-2

CHAPTER 5
Rules for Denial, Modification, Suspension, or
Termination of Facility Approval

Section 1.	Authority	5-1
Section 2.	Statement of Purpose.....	5-1
Section 3.	Procedures for Denial, Modification, Suspension, or Termination of Facility Approval.....	5-2

CHAPTER 6
Rules for ESRD Program Hearing Process

Section 1.	Authority	6-1
Section 2.	Statement of Purpose	6-1
Section 3.	Notice to Contestant of Right to a Hearing.....	6-1
Section 4.	Administrative Hearing Availability.....	6-2
Section 5.	Request for Hearing	6-3
Section 6.	Maintaining Services	6-4
Section 7.	Local Conference	6-4
Section 8.	Applicability	6-4
Section 9.	Notice of Hearing.....	6-5
Section 10.	Procedural Rights of Contestant	6-5
Section 11.	Failure to Appear	6-6
Section 12.	Discovery	6-6
Section 13.	Prehearing Conference.....	6-6
Section 14.	Informal Disposition	6-7
Section 15.	Hearing Officer	6-7
Section 16.	Evidence and Testimony	6-8
Section 17.	Representation.....	6-9
Section 18.	Order of Procedure.....	6-10
Section 19.	Decisions	6-11
Section 20.	Appeals	6-11
Section 21.	Transcripts and Record	6-11
Section 22.	Severability	6-12

CHAPTER 1

Rules and Regulations for the Wyoming End Stage Renal Disease Program

General Provisions

Section 1. Authority.

These rules and regulations are promulgated by the ~~Division of Health & Medical Services~~ Wyoming Department of Health & Social Services, Rural and Frontier Health Division, pursuant to its authority under the general provisions of the Wyoming Medical Assistance and Services Act at W.S. 35-1-240; 9-2-106(a)(viii) 42-4-101, et seq., more specifically W.S. 42-4-103(a)(xxiii) and 42-4-117, and the Wyoming Administrative Procedures Act at W.S. 16-3-101 through 16-3-115, et seq.

Section 2. Statement of Purpose.

These rules and regulations are adopted to implement the authority of the Wyoming End Stage Renal Disease Program, Division of Health and Medical Services Wyoming Department of Health, Rural and Frontier Health Division to:

- (a) Insure that no Wyoming resident requiring renal dialysis is denied treatment because of economic circumstances;
- (b) Provide dialysis service coverage assistance to eligible Wyoming patients during the pre-Medicare waiting period and, thereafter, pay the deductible Medicare does not cover;
- (c) Provide benefits for specific prescription drugs and limited transportation for all patients regardless of Medicare and/or Medicaid status;
- (d) Provide benefits for dialysis treatment and medical care for patients not eligible for Medicare/Medicaid coverage;
- (e) Provide benefits for Medicare/Medicaid and other eligible patients who dialyze at home but do not receive all their support from a dialysis facility;
- (f) Provide benefits for medical care for Medicare/Medicaid and other eligible patients who dialyze at home and do receive full support from a dialysis facility;
- (g) Provide benefits for ~~medical care~~ specific prescription drugs for Medicare/Medicaid and other eligible patients who have received a kidney transplant; and;

(h) Provide benefits for medical care for Medicare/Medicaid and other eligible patients who dialyze in a dialysis facility.

Section 3. Changes or Restrictions in Service Category Reimbursement.

The End Stage Renal Disease Program may restrict or categorize service reimbursement to meet budgetary limitations.

(a) Categories will be prioritized based upon medical necessity, Medicare eligibility and projected Medicare/Medicaid payments for different treatment modalities.

(b) In the event program benefits must be reduced, they will be reduced in a manner that takes into consideration medical necessity and Medicare/Medicaid coverage.

(c) The Division may affect changes in benefits by either adding or deleting entire categories or by proportionate changes across categories, or by a combination of both of these methods.

Section 4. Definitions.

The following definitions shall apply in the interpretation and enforcement of these rules. Where the context in which words are used in these rules indicates that such is the intent, words in the singular number shall include the plural and vice-versa. Throughout these rules gender pronouns are used interchangeably, except where the context dictates otherwise. The drafters have attempted to utilize each gender pronoun in equal numbers in random distribution. Words in each gender shall include individuals of the other gender.

~~The following terms are hereby incorporated by reference into these rules and regulations and shall apply~~

(a) “Administrator” - the Administrator of the ~~Division of Health & Medical Services~~ Rural and Frontier Health Division.

(b) “Adverse Action” - a termination, suspension, or reduction of benefits or covered services.

(c) “Affidavit” - a written notarized statement of facts made voluntarily under oath.

(d) “Aggrieved” - any person, ~~participating~~ approved facility, or provider who has been subject to an adverse action by the ~~Division of Health & Medical Services~~ Rural and Frontier Health Division.

(e) “Appeal” - a Contestant’s resort to district court after a final adverse agency determination or decision.

(f) “Applicant” - a person whose written application for the ESRD Wyoming End Stage Renal Disease Program has been submitted to the Division of Health & Medical Services Rural and Frontier Health Division, but who has not received final action.

(g) “Approved Facility” - a facility approved to participate in the Program, which includes, but is not limited to:

(i) Hospital outpatient dialysis facilities;

(ii) Free-standing ESRD clinics or centers;

(iii) In-state or out-of-state facilities, including free-standing facilities;

(iv) Medicare approved hospitals and transplant centers; and

(v) Veterans Administration and military hospitals which have Joint Commission, formerly known as Joint Commission on Accreditation of Healthcare Organizations (JCAHO), approved renal units.

(gh) “Complaint” - a writing in which a person written requests for a hearing that includes at a minimum: the name, address, and the reason for the request, including the nature of the Program action, order, or determination being contested.

(hi) “Contestant” - the person, a facility, or representative who brings the complaint against the Division.

(ij) “Contested case” - a disputed action taken by the Department involving eligibility, termination of eligibility, suspension of eligibility, denial of medical services, or denial of payment for medical services.

(jk) “Date of Action” - the intended date on which a termination, suspension, or reduction becomes effective.

(kl) “Department” - the Wyoming Department of Health & Social Services, DHSS.

(lm) “Designee” - the appointed agent of the Director or the Administrator having all the authority of the Director or the Administrator.

(mn) “Director” - Director of the Wyoming Department of Health & Social Services.

(~~n~~o) “Division” - ~~The Division of Health & Medical Services~~ Rural and Frontier Health Division (RFHD)~~DHMS~~.

(~~o~~p) “End Stage Renal Disease; (ESRD)” - that stage of renal impairment which is virtually always irreversible and permanent and requires dialysis or kidney transplantation to ameliorate uremic symptoms and maintain life.

(~~p~~q) “Hearing” - a contested case hearing before a designated hearing officer.

(~~q~~r) “Hearing officer” - any employee of the Department or other individual designated by the Director to serve as the presiding officer at a hearing held under these rules.

(~~r~~s) “Notice of Action” - a written statement to the applicant/Contestant informing him of the action the Department intends to ~~take~~make, the reasons for the intended action, the specific regulations that support the action intended, an explanation of the person’s right to request a hearing, and an explanation of the circumstances under which a continuation of benefits may be maintained pending a hearing.

(~~s~~) — “~~Participating facility~~” — ~~a facility approved to participate in the Program, which includes, but is not limited to:~~

(i) — ~~Contracted Hospital outpatient dialysis facilities;~~

(ii) — ~~Contracted Free standing ESRD clinics or centers;~~

(iii) — ~~Contracted In state or out of state facilities including free standing facilities;~~

(iv) — ~~Medicare approved hospitals and transplant centers; and~~

(v) — ~~Veterans Administration and military hospitals which have JCAHO approved renal units.~~

(t) “Program” - ~~The Wyoming Chronic Renal Disease Program or The Wyoming End Stage Renal Disease~~ (ESRD) Program.

(u) “Provider” - all parties who have ~~in effect an agreement to participate in the ESRD Program~~ approval and provide related services to Program recipients.

(v) “Recipient” - an ESRD patient that has been determined eligible for and is receiving program benefits.

(w) “Respondent” - the Wyoming Department of Health & Social Services.

(x) “Request for a Hearing” - ~~a clear expression in writing~~ written notice by the Contestant, or ~~his~~ her authorized representative, ~~that he wants~~requesting the opportunity to present ~~his~~ her case to a reviewing authority.

(y) “Service Approval Agency” - the ESRD Program, ~~Division of Health & Medical Services~~ Rural and Frontier Health Division, Wyoming Department of Health.

Section 5. Payment of Program Benefits.

(a) Benefits are only payable after all other possible third parties (e.g., private/group insurance, Medicare, Medicaid, Indian Health Service (IHS) or the Veterans Administration) have met their ~~liability~~ responsibilities to pay, or after it is determined that there are no third parties that may be liable for payment.

(b) Benefits for dialysis treatments, home training, non-family, home dialysis partners/technicians, stabilization, hospitalization, laboratory charges, home dialysis supplies, anti-rejection drugs, and transportation, are payable up to a maximum per recipient per year based upon:

(i) The recipient’s eligibility status (Title IV of the Civil Rights Act of 1964);

(A) If any person’s eligibility for one of the payment programs cannot be established with certainty before dialysis is started, the ~~State~~ Wyoming ESRD Program will provide funding for his dialysis services until his eligibility status for ~~Medicaid, Medicare or IHS~~ all other possible third party payers has been determined or is waived.

(ii) Available funds;

(iii) Covered services, supplies ~~&~~and prescription drugs;

~~(iv) Any contract between the Division and the recipient’s participating facility; and~~

~~(v)~~iv The reimbursement rate as determined by the Division and as specified in Medicaid and/or Medicare standards.

CHAPTER 2

Rules and Regulations for the Wyoming End Stage Renal Disease Program

Eligibility Requirements

Section 1. Authority.

These rules and regulations are promulgated by the Rural and Frontier Health Division, pursuant to its authority under the general provisions of the Wyoming Medical Assistance and Services Act at W.S. 42-4-101, *et seq.*, more specifically W.S. 42-4-103(a)(xxiii) and 42-4-117, and the Wyoming Administrative Procedures Act at W.S. 16-3-101, *et seq.*

Section 2. Statement of Purpose.

These rules and regulations are adopted to implement the Division's authority to establish the eligibility of recipients for ESRD Program benefits.

Section 3. Eligibility.

(a) An applicant will be eligible to receive Program benefits when ~~he~~ the applicant receives Division approval after meeting the following requirements:

- (i) Has a certified medical diagnosis of ESRD;
- (ii) Is a bona fide resident of Wyoming, being ~~is~~ actually present in the ~~s~~State, and ~~havings~~ furnished documentation of residency;
- (iii) Has made application through the Division. Applications may be obtained through the Division or the following:
 - (A) An approved ESRD center or facility~~An ESRD center and/or facility (in-state and/or out-of-state) that has received program approval or interim approval;~~
 - (B) A Medicare approved hospital/transplant center;
 - (C) A military or Veterans Administration hospital with a ~~JCAHO~~ Joint Commission approved renal unit; or
 - (D) A Public Health Nursing Field Office ~~or a Division of Public Assistance & or Social Service Field Office.~~
- (iv) Has provided income data as requested by the Division for purposes of determining reimbursement obligation/co-pay liability.

(v) Agrees to maintain or continue to make premium payments on insurance plans (individual, group or ~~Title XVIII Medicare~~), prepaid medical plans, or is willing to provide a financial statement detailing why such insurance coverage cannot be maintained.

(vi) Agrees to receive services only through ~~participating~~ approved facilities and providers;

Section ~~34~~. Application Process.

In making application, a person must submit or have submitted ~~for him~~ on their behalf the following documents:

(a) A properly completed and signed original Application for Program Benefits; ~~a Social Summary Face sheet, a signed authorization to Furnish/Release Information, or a Reapplication for Benefits form~~ and documentation of insurance coverage (private, Medicaid or Medicare) and income;

(b) Copies of acceptable documentary evidence of residency. Copies of any two of the following documents will ~~would~~ be considered acceptable to determine residency:

(i) A current, valid Wyoming driver's license, or an identification card with a current Wyoming address ~~and telephone number~~;

(ii) A copy of a current, valid Wyoming voter's registration card;

(iii) Mortgage or rent payment receipts from two (2) of the three (3) months immediately preceding the date of application revealing a Wyoming address;

(iv) Utility payment receipts for two (2) of the three (3) months immediately preceding the date of application revealing payment of utilities for a Wyoming address;

(v) A current, valid Wyoming Medicaid card;

(vi) Wyoming property tax receipts for the most recently completed tax year;

(vii) Wyoming ~~e~~Employment/unemployment records;

(viii) Postal verification of a Wyoming address; or

(ix) Current Wyoming resident hunting or fishing license.

(c) A copy of the properly completed, signed and dated ~~Chronic Renal Disease Medical Report Form~~ End Stage Renal Disease Medical Evidence Report (HCFA CMS Medical Form 2728-U4);

(d) A copy of the applicant's Social Security ~~c~~Card (or allowable substitute);

(e) A copy of an official~~official~~ ~~Social Security Administration~~ Medicare denial notification;

(f) A copy of an official Medicaid denial notification;

(g) A copy of an official IHS medical contract payment denial notification.

Section 45. Co-payment Liability.

Copies of financial data must be provided to determine applicant co-pay liability. ~~Although basic program eligibility will be determined without the financial data documents, specific benefit eligibility cannot be determined, and claims against the benefit cannot be processed and will be rejected until co-pay liability is established. (Co-payment liability is outlined in the Division's Program's Administrative pPolicies and pProcedures.)~~

(a) The financial documents required are:

(i) A copy of a financial statement form acceptable to the Division (e.g., ~~CHS form, etc.~~) filed income tax returns, Social Security statements, bank statements, copies of W-2 forms, retirement statements); or

(ii) If the applicant's current gross income has become significantly reduced, a more detailed financial statement listing income information may be required for program benefit and co-payment liability consideration.

(b) Financial data will be ~~routinely~~ requested for application ~~up-date~~ updates ~~every twelve months on an annual basis.~~

Section 56. Incomplete Applications.

(a) An application shall be deemed incomplete for any one of the following reasons:

(i) Failure to provide information requested on the application form;

(ii) Lack of supporting documents;

(iii) Lack of or improper signature;

(iv) Lack of legal residency documentation;

(v) Lack of financial documentation.

(b) An incomplete application will be returned to the ~~submitting agency, facility or hospital for correction~~ applicant for corrections, with deficiencies noted.

~~(i) A copy of the letter notifying the facility or hospital that the application is incomplete will be sent to the applicant.~~

~~(ii i)~~ If the application is incomplete, specific benefit eligibility will not be determined.

~~(iii ii)~~ The benefit eligibility date will be ~~established~~determined when a properly completed and signed application is received and eligibility is determined.

~~(iv iii)~~ Payment of claims will not be made until an eligibility date has been established.

(c) A recipient must reapply for benefits in cases where ~~his~~ her eligibility has lapsed in order to regain receipt of ESRD Program benefits.

Section 67. Eligibility Date.

~~(a)~~—The ESRD Program eligibility date will be based on the date the Division receives a properly completed and signed Application for Benefits, and once eligibility is determined.~~or Reapplication for Benefits as specified in this chapter.~~

~~(b a)~~ The ESRD Program eligibility date will be computed from the latest date of the following:

(i) The date application/reapplication and supporting documentation was received by the Division; or

(ii) ~~30 days prior to~~ The first dialysis treatment or transplant surgery;
or

~~(iii) The date Wyoming residency was established and application was made.~~

CHAPTER 3

Rules and Regulations for the Wyoming End Stage Renal Disease Program

Conditions of Participation for Facilities

Section 1. Authority.

These rules and regulations are promulgated by the Rural and Frontier Health Division, pursuant to its authority under the general provisions of the Wyoming Medical Assistance and Services Act at W.S. 42-4-101, et seq., more specifically W.S. 42-4-103(a)(xxiii) and 42-4-117, and the Wyoming Administrative Procedures Act at W.S. 16-3-101, et seq.

Section 2. Statement of Purpose.

These rules and regulations are adopted to implement the Division's authority to establish standards and conditions of participation for in-state dialysis facilities and out-of-state facilities. ~~that wish to enter into a contract with the Wyoming ESRD Program.~~ This Program reserves the right, where comparable facilities are in-state and are equal in geographic accessibility, to encourage the use of those in-state facilities.

Section 3. Conditions and/or Approval Requirements.

(a) An approved ESRD facility is one that:

- (i) Has met all Medicare certification requirements; and
- (ii) Has been assigned a Medicare ESRD provider number;

~~(iii) — Has entered into a contract with the Division to participate in the State's ESRD Program and agrees to cooperate with the program.~~

~~—— (iv) — Has authorized the Division or its designee to conduct audits of its records, at reasonable time intervals.~~

(b) The ~~participating~~ facility approval date may not be earlier than the approved date granted by HCEA CMS for Medicare ESRD approval.

(c) Facilities under interim approval for Medicare participation also will be classified as having interim approval by the ESRD Program.

CHAPTER 4

Rules and Regulations for the Wyoming End Stage Renal Disease Program

Denial of Application; Modification, Suspension, or Termination of Patient Benefits

Section 1. Authority.

These rules and regulations are promulgated by the Rural and Frontier Health Division, pursuant to its authority under the general provisions of the Wyoming Medical Assistance and Services Act at W.S. 42-4-101, *et seq.*, more specifically W.S. 42-4-103(a)(xxiii) and 42-4-117, and the Wyoming Administrative Procedures Act at W.S. 16-3-101, *et seq.*

Section ~~1~~2. Statement of Purpose.

These rules and regulations are adopted to implement the Division's authority to deny ~~benefits application~~ or modify, suspend or terminate a person's benefits under the ESRD Program for the following reasons:

(a) The applicant/recipient is not a bona fide resident of the State of Wyoming;

(b) The applicant/recipient fails or refuses to provide the periodic documentation of residency;

(c) The applicant/recipient fails or refuses to submit a recipient financial status report for the purpose of determining reimbursement obligation/co-pay liability;

(d) The applicant/recipient submits an application or any documents required in support of the application which contains false statements of fact designed to enhance that person's eligibility status for ESRD Program benefits;

(e) The applicant/recipient does not have end stage renal disease, regains kidney function, or voluntarily stops treatment for end stage renal disease;

(f) The recipient refuses to reimburse the Division after being notified of third party benefits or recipient reimbursement obligation;

(g) The recipient notifies the Program in writing that he no longer wishes to claim ESRD Program benefits;

(h) The applicant/recipient dies;

(i) The recipient submits false claims to the ESRD Program;

(j) The ESRD Program has not paid a claim for benefits on behalf of the recipient during any period of twelve (12) consecutive months;

(k) ESRD Program funds are curtailed;

(l) Funds allocated for payments on behalf of the recipient are exhausted.

Section 23. Procedures for the Denial of Benefits applications—or the Modification, Suspension, or Termination of Benefits.

(a) Any applicant for ESRD Program benefits will be notified in writing if ~~his~~ her application has been denied. The notification will state the reasons for denial and ~~his~~ her rights to request a hearing;

(b) Any recipient of benefits from the ESRD Program will be notified if his benefits are to be modified, suspended or terminated. Notification will be by certified mail to the most recent address known to the Program and shall contain the reasons for the intended action, as well as the contestant's right to a hearing and the method by which he may obtain a hearing;

(c) These procedures do not apply to adjustments made by the ESRD Program in the type of Program benefits or the amount of benefits available when such adjustments are necessary to conform to budgetary limitations.

CHAPTER 5

Rules and Regulations for the Wyoming End Stage Renal Disease Program

Denial, Modification, Suspension, or Termination of Facility Approval

Section 1. Authority.

These rules and regulations are promulgated by the Rural and Frontier Health Division, pursuant to its authority under the general provisions of the Wyoming Medical Assistance and Services Act at W.S. 42-4-101, et seq., more specifically W.S. 42-4-103(a)(xxiii) and 42-4-117, and the Wyoming Administrative Procedures Act at W.S. 16-3-101, et seq.

Section ~~1~~2. Statement of Purpose.

These rules and regulations are adopted to implement the Division's authority to deny, modify, suspend, or terminate ESRD facility approval.

(a) A program approved in-state dialysis facility or out-of-state facility will have its privilege to participate in the Wyoming ESRD Program denied, modified, suspended, or terminated if:

(i) The facility loses Medicare approval;

~~(ii) The facility fails or refuses to enter into a contract with the Division to participate in the Wyoming ESRD Program;~~

~~(iii ii)~~ (ii) The facility, with interim approval from the ESRD Program, fails to get receive Medicare/~~HCFA~~ CMS approval;

~~(iv) The contract between the facility and the Division is terminated for any reason, including:~~

~~(A) The facility's failure to comply with the terms of applicable contract and inability to cure such failure within 30 days after receipt of written notice from the Division;~~

~~(B) The contracting parties are unable to agree upon any amendment which would therefore be needed to enable continuation of services;~~

~~(C iii)~~ (iii) The facility voluntarily withdraws from participation in the ESRD Program by providing the Division with a sixty (60) day written notice; or

~~(D iv)~~ (iv) By mutual written consent of the Division and the facility;:-

(v) The facility fails or refuses to submit, in a manner prescribed by the Division, information which is requested for the purpose of determining the facility's compliance with program rules ~~performance under the contract~~;

(vi) The facility submits false or misleading information to the Division;

(vii) The facility fails to reimburse the program within ninety (90) days after it has been notified in writing that over payments have been made;

(viii) The facility files false claims.

Section ~~23~~. Procedures for Denial, Modification, Suspension, or Termination of Facility Approval.

(a) The ESRD Program shall notify the Administrator of the facility by certified mail of its intent to deny, modify, suspend, or terminate Program approval, the reasons for the adverse action, as well as reaffirm the facility's~~contestant's~~ right to a hearing and the method by which ~~he~~ it may obtain a hearing.

CHAPTER 6

Rules and Regulations for the Wyoming End Stage Renal Disease Program

ESRD Program Hearing Process

Section 1. Authority.

These rules and regulations are promulgated by the Rural and Frontier Health Division, pursuant to its authority under the general provisions of the Wyoming Medical Assistance and Services Act at W.S. 42-4-101, *et seq.*, more specifically W.S. 42-4-103(a)(xxiii) and 42-4-117, and the Wyoming Administrative Procedures Act at W.S. 16-3-101, *et seq.*

Section ~~1~~2. Statement of Purpose.

These rules and regulations are adopted to implement the Division's authority to allow appeal by any applicant/recipient, provider or facility aggrieved by the ESRD Program's decision to deny, modify, suspend, or terminate participation.

Section ~~2~~3. Notice to Contestant of Right to a Hearing.

(a) The Division must inform every applicant, recipient, or provider in writing:

- (i) Of his right to a hearing;
- (ii) Of the method by which ~~he~~ she may obtain a hearing; and
- (iii) That he may represent himself or use legal counsel, a relative, a friend, or other spokesperson.

(b) The Division must provide the above information:

- (i) At the time the person applies for benefits; and
- (ii) At the time of any action affecting ~~his~~ her claim.

(c) The Division must mail a notice at least ten (10) days before the date of action, unless an exception exists. The notice must contain:

- (i) A statement of the intended action;
- (ii) The reasons for the intended action;
- (iii) The specific regulations that support, or the change in federal or state law or regulation that requires, the action;

- (iv) An explanation of:
 - (A) The individual's, provider's, or facility's right to request a hearing; or
 - (B) In cases of action based on a change in law or regulation, the circumstances under which a hearing will be granted; and
- (v) An explanation of the circumstances under which benefits may be continued if a hearing is requested.

- (d) The Division may mail notice not later than the date of action if:
 - (i) The Division has factual information confirming the death of a recipient;
 - (ii) The Division receives a clear written statement signed by a recipient that:
 - (A) He no longer wishes services; or
 - (B) Gives information that requires termination or reduction of services and indicates that ~~he~~she understands that this must be the result of supplying that information;
 - (iii) The recipient has been admitted to an institution where he is ineligible under the plan for further services;
 - (iv) The recipient's whereabouts are unknown and the post office returns agency mail directed to ~~him~~her indicating no forwarding address;
 - (v) The Division establishes the fact that the recipient has been accepted for benefits by another local jurisdiction, state, territory, or commonwealth; or
 - (vi) A change in the level of medical care is prescribed by the recipient's physician.

Section ~~34~~. Administrative Hearing Availability.

- (a) Hearings shall be available to the following aggrieved parties when all other requirements are met:
 - (i) A person requesting or receiving services or benefits administered by the Division; and
 - (ii) A provider of Division services; ~~and~~.

~~(iii) A representative of any of the above.~~

(b) Hearings may be requested on the following Division actions:

(i) Failure to act on an application in a timely manner as specified in the service or program rules and regulations;

(ii) Denial, modification or termination of a service or program benefits; and

(iii) Violations of rights under Title VI of the Civil Rights Act of 1964.

Section 45. Request for Hearing.

Any person, provider, facility or his representative, may make a request to the Division in writing, for a hearing.

(a) Any unclear request for a hearing shall be clarified by the Contestant upon request by the Division. The Contestant shall be assisted in putting the request in writing, if needed.

(b) The request shall contain, at a minimum ~~at least~~:

(i) The name, address, and telephone number of the person or facility requesting the hearing; and

(ii) The reason for the request, including the nature of the Division action, order, or determination being contested.

(c) The request shall be mailed or personally delivered to the Division within thirty (30) days of the date of the notice of action ~~is~~ was sent or delivered to the Contestant.

(i) The written response must be delivered to the following address:

Wyoming End Stage Renal Disease Program
~~Division of Health & Medical Services~~ Rural and Frontier Health
Division
~~4th Floor, Hathaway Building~~ 6101 Yellowstone Road, Suite 510
Cheyenne, Wyoming 82002

(ii) The Division shall evaluate the request and, within twenty (20) days of receipt of the request:

(A) Give notice to the requesting party that a determination in his favor has been made and specify the action to be taken by the Division; or

(B) Give notice to the requesting party that a contested hearing will be held, and that the matter has been referred to determine the time, date and place of the hearing.

Section ~~5~~6. Maintaining Services.

(a) If the Division mails the ten (10) day notice as required above, and the ~~e~~Contestant requests a hearing before the date of action, the Division may not terminate or reduce services until a decision is rendered after the hearing~~;~~;

(b) If the Division's action is sustained by the final decision, the agency may institute recovery procedures against the applicant, recipient, provider, or facility to recoup the cost of any services furnished.

Section ~~6~~7. Local Conference.

(a) A local conference shall be offered to determine if the issue can be resolved informally.

(b) The Contestant shall be advised that:

(i) The local conference is optional~~, and;~~;

(ii) It does not delay or replace the contested hearing~~;~~ and

(iii) It may be attended by the Department employee~~worker who that~~ took the action, the program manager or ~~his~~ her supervisor, and the Contestant and/or representative.

(c) The contested hearing shall still be held unless the Contestant withdraws the request in writing.

(d) The local conference shall be conducted within two (2) working days of the request, unless the Contestant wishes a later conference, or the Contestant withdraws the request in writing.

Section ~~7~~8. Applicability.

Administrative hearings within the ~~Division of Health & Medical Services~~Rural and Frontier Health Division shall be conducted in accordance with these rules, unless specifically provided otherwise by statute, ~~unless~~ or this procedure would conflict with federal regulations.

Section 89. Notice of Hearing.

(a) In any contested case, the Director shall afford reasonable notice of the hearing to all parties.

(i) Reasonable notice, as used in this section, shall be not less than twenty (20) days prior to the hearing date. The time period specified herein may be waived by the Contestant upon written or oral notification to the Department. Where notification of waiver is made orally it shall be reduced to writing by the Department and entered in the Contestant's record.

(ii) Notice shall be served personally or by certified mail to the last known address of the Contestant~~party~~.

(b) A notice of hearing shall contain, at a minimum~~least~~, the time, place, and nature of the hearing; the legal authority and jurisdiction under which the hearing is being held; the particular sections of the statutes or rules involved; a short and plain statement of the matters asserted; the docket number assigned to the case; and the right to be represented by an attorney or other representative~~.; availability of legal aid; and the right to a hearing.~~

~~(i) If the Respondent is unable to state the matters in detail at the time notice is served, the initial notice may be limited to a statement of the issues involved, and thereafter, upon request of any party, a more definite and detailed statement shall be furnished within ten (10) days of receipt of that request by the party.~~

(ii) Upon request by the Contestant, ~~party served~~, the hearing officer shall, upon a showing of good cause, allow the Contestant ~~party~~ an alternative time and place for the hearing, provided such request is made within ten (10) days of receipt of the notice of hearing. When such a request is granted, the Director or his designee shall reissue the notice in accordance with these rules, except that reasonable notice as used in this subsection shall be five (5) days prior to the hearing date.

(A) Only one request for rescheduling of a hearing shall be honored unless, in the hearing officer's judgment, additional changes must be allowed to avoid manifest injustice. Notice shall be issued as provided by Section 8:(a)(ii) above.

(B) A hearing shall be held within ninety (90) days of the Division action which gives rise to the complaint, unless otherwise provided by law.

Section 910. Procedural Rights of Contestant.

The Contestant, or his representative, must be given the opportunity to:

(a) Examine at a reasonable time before the date of the hearing and during the hearing:

- (i) The content of the Contestant's case file; and
- (ii) All documents and records to be used by the Division at the hearing.

(b) Bring witnesses, establish all pertinent facts and circumstances, present an argument, and question or refute any testimony or evidence, including an opportunity to confront and cross-examine adverse witnesses.

Section ~~10~~11. Failure to Appear.

If a Contestant fails to appear at the place, date, and time specified in a notice, the hearing officer may, within ~~his~~ her discretion:

(a) Continue the hearing to a later date and provide proper notice as prescribed in these rules; ~~or~~

(b) Proceed to conduct the hearing without the Contestant and dispose of the contested case as provided, unless prohibited by federal or state statute; or

(c) Deny or dismiss a hearing if:

(i) The Contestant withdraws the request in writing; or

(ii) The Contestant fails to appear at a scheduled hearing without good cause.

(A) Good cause shall be determined by considering circumstances which are beyond the Contestant's control, such as illness, illness of another household member requiring the presence of the Contestant, a household emergency or other such circumstances that the hearing officer determines were beyond the Contestant's control.

Section ~~11~~12. Discovery.

All discovery in a contested case shall be governed by the Wyoming Rules of Civil Procedure, as described in the W.S. 16-3-107(g) and (h). The party for whom any depositions are taken will ensure that the original transcripts are placed in the record by filing them with the Director or his designee. All other records of discovery shall likewise be filed with the Director or his designee by the party originating such discovery.

Section ~~12~~13. Prehearing Conference.

(a) At a time on or before the day of the hearing, the hearing officer, on his own or on either party's motion, may meet with the parties for a conference to consider

simplification of the issues, stipulations and admissions of fact, clarification or limitation of evidence, and any other matters that may expedite the proceeding and assure a just conclusion of the case.

(b) Any stipulations, limitations or agreements made at a prehearing conference shall be recited in the record and shall control the course of the proceedings, unless modified during the hearing to prevent manifest injustice.

Section ~~13~~14. Informal Disposition.

Settlement of a contested case by any informal means (i.e., stipulation, agreed settlement or consent order) shall be allowed at any time, unless precluded by law. Such settlements shall be in writing, signed by both parties, and included as a part of the record. The Director or ~~his~~ her designee shall enter an order dismissing the contested case proceeding upon such settlement, and such order shall be considered a final order of the Department that is not appealable.

Section ~~14~~15. Hearing Officer.

(a) The Director or ~~his~~ her designee ~~may~~shall appoint a hearing officer to preside over contested case hearings on a case-by-case basis, or for a scheduled period of time, as ~~appropriate he sees fit.~~

(b) The hearing officer shall be an employee of the Department, or other individual determined by the Director to be qualified to serve in such a capacity, who has not taken part in the investigation, preparation, or earlier disposition of the case to be heard.

(i) The hearing officer shall withdraw himself from consideration of a case at any time he deems himself disqualified providing there are other qualified presiding officers available to act. Withdrawal shall be made in writing to the Director.

(ii) Any party may request in writing that the Director remove and replace the hearing officer in a contested case. This request must be accompanied by a statement and affidavits, setting forth the alleged grounds for disqualification. The Director may deny a party's request for removal and shall issue a written statement explaining the grounds for his denial which shall be made a part of the record. If the request is granted, the Director shall appoint a new hearing officer.

(iii) The Contestant may object to the appointment of the hearing officer in the record at the hearing. The objection shall set forth the alleged grounds for disqualification.

(c) The hearing officer shall have all powers necessary to conduct a fair and impartial hearing, including, but not necessarily limited to, the following authority:

- (i) To administer oaths and affirmations;
 - (ii) To subpoena witnesses and require the production of any books, papers or other documents relevant or material to the inquiry;
 - (iii) To rule upon offers of proof and relevant evidence;
 - (iv) To provide for discovery and determine its scope;
 - (v) To regulate the course of the hearing;
 - (vi) To hold conferences for the settlement or simplification of the issues;
 - (vii) To dispose of procedural requests or similar matters;
 - (viii) To take any other action authorized by these rules; and
 - (ix) Make recommended decisions when directed to do so by the Department.
- (d) Except to the extent required for the disposition of ex parte matters authorized by law, the hearing officer shall not consult with any individual or party on any fact at issue, except as allowed in W.S. 16-3-111.

Section ~~15~~16. Evidence and Testimony.

- (a) Except as may be otherwise ordered by the hearing officer, the Contestant bears the burden of proof.
- (b) Admissibility of evidence:
 - (i) The parties shall be entitled to present any oral or documentary evidence, submit rebuttal evidence and conduct cross-examinations, as may be required for a full disclosure of the facts. All documentary or physical evidence submitted for consideration shall be marked as exhibits. The Respondent's exhibits shall be marked by letters of the alphabet beginning with "A". The Contestant's exhibits will be marked by numbers beginning with "1".
 - (ii) The hearing officer shall allow any oral or documentary evidence, except that he may exclude irrelevant, immaterial, or unduly repetitious evidence.
- (c) Objections:
 - (i) The grounds for objection to any evidentiary ruling by the hearing officer shall be briefly stated. Rulings on all objections shall appear in the record. Only

those objections made before the hearing officer, or specifically stipulated to by both parties, may be relied on in a subsequent proceeding.

(ii) Formal exception to an adverse ruling is not required.

(d) Privileged and confidential information:

(i) Any information that is considered privileged at law shall be recognized by the hearing officer in considering evidence.

(ii) No employee of the Department shall be compelled to testify or to divulge information which is confidential or privileged at law and which is contained within the records of the Department or acquired within the scope of ~~his~~ her employment except as provided in W.S. 16-3-107.

(e) The hearing officer may take official notice of any material fact not appearing in evidence in the record that is of the nature of traditional matters of judicial notice or within the special technical knowledge or files of the Department. Parties shall be given an opportunity to contest matters judicially noticed prior to a final decision by the Department in accordance with W.S. 16-3-108.

(f) Each witness who is present to give testimony will identify himself by stating his name and address, indicate on whose behalf he will testify, and be administered the following oath by the hearing officer: "Do you swear or affirm to tell the truth, the whole truth, and nothing but the truth?"

Section ~~16~~17. Representation.

(a) All parties have a right to represent themselves, to be represented by an attorney licensed to practice law in Wyoming, or any other person chosen by the Contestant to appear on ~~his~~ her behalf. If the Contestant is represented by an attorney, payment of attorney's fees and cost are the responsibility of the Contestant. ~~Contestant may be eligible for legal services available through the Legal Services Corporation if he she meets the applicable guidelines of that agency~~

(i) Only the Contestant, his attorney, or his representative may examine or cross-examine witnesses.

(ii) The hearing officer may examine witnesses.

(b) Respondent may request the Attorney General to assist in contested case hearings to the extent required by W.S. 16-3-112(c).

Section ~~17~~18. Order of Procedure.

(a) As nearly as practicable, the following order of procedure shall be followed:

(i) The hearing officer shall announce the hearing is open and call by docket number and title the case to be heard. The hearing officer shall ask if parties are ready to proceed and will allow parties an opportunity to dispose of any preliminary matters.

(ii) The hearing officer shall administer the oath to all witnesses who will present testimony.

(iii) The hearing officer may, in his discretion, allow evidence to be heard in an order other than that prescribed here.

(iv) Opening statements may be made, Contestant first, then Respondent.

(v) Evidence will be heard, Contestant first, then Respondent. Contestant may then offer rebuttal evidence. Parties may each exercise the right to cross-examine.

(vi) No testimony shall be received by the hearing officer unless given under oath/affirmation administered by the hearing officer.

(vii) Closing statements may be made, Contestant first, then Respondent, then the Contestant in rebuttal.

(viii) The hearing officer may limit the time for opening and closing statements.

(ix) The hearing officer may recess the proceedings as appropriate.

(x) After all parties have had an opportunity to be heard, the hearing officer shall excuse all witnesses and close the evidence.

(A) Evidence may be reopened only upon a motion by a party to the proceeding on a showing of good cause.

(b) Within ten (10) working days of the close of the hearing, or such additional time as the hearing officer may allow, each party shall be allowed to file with the hearing officer any proposed findings of fact and conclusions of law, together with a supporting brief. Such proposals and briefs shall be served on all other parties.

Section ~~18~~19. Decisions.

(a) The hearing officer shall make proposed findings of fact and conclusions of law within twenty (20) working days of the close of the hearing and forward them to the Director for final determination. This time may be extended if the parties or other interested persons are to submit briefs; but, in no event may this time be extended by more than ten (10) working days, unless a later date is stipulated, in writing, by Contestant and Respondent.

(b) Within ten (10) working days of receipt of the hearing officer's proposed findings of fact and conclusions of law, the Director or his designee will make and enter in the record the final decision in the case. This decision shall be made and served on all parties of the proceeding. The decision shall include:

(i) A statement of the findings of fact and conclusions of law, stated separately, with a concise and explicit statement of the underlying facts supporting the findings; and

(ii) The appropriate rule, order, relief or denial thereof. The decision shall be based upon a consideration of the whole contested case record or any portion stipulated to by the parties. The decision shall state all facts officially noticed and relied upon as provided by statute. It shall be made on the basis of a preponderance of evidence contained in the record.

(c) Final decisions of the Department shall be effective immediately after being entered in the record and served upon all parties. Service shall be accomplished either personally or by mailing a copy of any decision or order to each party or to ~~his~~her attorney of record within a reasonable time following the entry of the decision into the record.

Section ~~19~~20. Appeals.

(a) Appeals from a final decision of the Department shall be taken in accordance with W.S. 16-3-114 and Rule 12 of the Wyoming Rules of Appellate Procedure.

Section ~~20~~21. Transcripts and Record.

(a) When a contested case is set for hearing, the Director or his designee shall assign a docket number to each case and enter the case with its number and date of filing in a docket book maintained by the Director or his designee. The Director or his designee shall maintain a separate file for each docketed case in which all pleadings, transcripts, correspondence, papers, and exhibits for that case shall be maintained. All such items shall have noted thereon the assigned docket number and the date of filing.

(b) The Department shall record all contested case proceedings electronically, through the use of a qualified court reporter or any other appropriate means determined by the agency, or the hearing officer. Transcriptions of oral proceedings or written transcripts of a witness's testimony may be obtained by Contestant upon payment of the cost.

~~(i) In a nonpublic investigatory proceeding, requests for copies or transcripts may be limited to testimony of the requesting party.~~

(iii) Where Contestant can demonstrate that ~~heshe~~ is indigent and that ~~heshe~~ cannot effectively perfect ~~his~~her appeal without such transcription, the Department may waive the payment of the fee.

(c) The record of the hearing shall contain:

(i) All formal or informal notices, pleadings, motions, intermediate rulings;

(ii) Evidence received or considered, including matters officially noticed;

(iii) Questions and offers of proof, objections and rulings;

(iv) Any proposed findings and exceptions thereto; and

(v) The report of the hearing officer to the Director and the final decision of the Director.

Section ~~24~~22. Severability.

If any portion of these rules is found to be invalid or unenforceable, the remainder shall continue in effect.